



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO. CRT 05468-10
DCR DOCKET NO. EM14WB-54045

Shi-Juan Lin and the Director of the
New Jersey Division on Civil Rights,

Complainants,

v.

Dane Construction Co., and
Pat Buckley, Individually,

Respondents.

Administrative Action

**SUPPLEMENTAL ORDER FOR
ATTORNEY FEES**

Shi-Juan Lin, Complainant, *pro se*

Marisa Slaten, Deputy Attorney General (*John J. Hoffman, Acting Attorney General of New Jersey*)
for the New Jersey Division on Civil Rights

Dennis Alan Auciello, Esq., for Respondents Dane Construction Co. and Pat Buckley

BY THE DIRECTOR:

This matter is before the Director of the New Jersey Division on Civil Rights (DCR) to address the application for \$32,560 in attorney fees and costs, filed by the prosecuting deputy attorney general (DAG). In a May 6, 2013 order, the Director concluded that the respondents, Dane Construction Company (Dane) and Pat Buckley (Buckley), subjected Shi-Juan Lin (Complainant) to racial harassment and constructively discharged her, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

The May 6, 2013 order awarded emotional distress damages and imposed statutory penalties. The Director adopted the ALJ's conclusion that Respondents were not entitled to attorney fees under the LAD, and concluded that a fee award to the State would serve the public interest. The order invited the parties to attempt to amicably resolve the issues regarding attorney

fees and costs or, if that were not possible, submit briefs and/or certifications addressing the issue. On May 28, 2013, the DAG filed a certification in support of her application for attorney fees and costs. Respondents filed a reply dated June 5, 2013.

If a complainant prevails on a LAD complaint, attorney fees should ordinarily be awarded unless special circumstances would make a fee award unjust. Hunter v. Trenton Housing Auth., 304 N.J. Super. 70, 74-75 (App. Div. 1997). When a complainant's case is prosecuted by an attorney for the DCR, reasonable fees for such representation may be assessed against the respondent. N.J.S.A. 10:5-27.1. Any application for legal fees must be supported by a certification of services. Rendine v. Pantzer, 141 N.J. 292, 334-35 (1995). The certification must be more than simply a raw compilation of hours. Ibid. It must be sufficiently detailed to allow a meaningful review of whether the hours billed were reasonably expended in light of the result achieved or whether the billed services were excessive, redundant, or unnecessary. Ibid.; Szczepanski v. Newcomb Hosp. Med. Center, 141 N.J. 346, 366-67 (1995). Although a fee award is not required to be proportionate to the damages awarded, if the fees requested are disproportionate to the damages recovered, then there is a heightened responsibility to review the fee request. Id. at 366. That evaluation should also weigh "the interest to be vindicated in the context of the statutory objectives" and "any circumstances incidental to the litigation that directly or indirectly affected the extent of counsel's efforts." Id. at 366-67.

In this case, the DAG's certification of service attests that the Division of Law's hourly rate for an attorney with her level of experience is \$155, and that she expended 206.9 hours related to the prosecution of Complainant's complaint.

Respondent does not challenge the \$155 hourly rate or claim that the DAG's submission was insufficiently detailed to allow a meaningful review. Instead, Respondent argues that certain legal tasks should not be compensated under the circumstances. In particular, Respondent argues that because the Director awarded no back pay, the time devote to pursuing that remedy is not compensable. Respondent argues that its position is mandated by Robb v. Ridgewood Bd. of

Educ., 269 N.J. Super. 394 (Ch. Div. 1993). However, Robb does not require an automatic fee reduction whenever a litigant does not receive every remedy sought. Instead, as the Robb court wrote:

If the claims on which the plaintiff did not prevail and the claims upon which she did prevail are distinctly different claims that are based on different facts and legal theories, the court cannot award any fee for services on the unsuccessful claims. However, if the unsuccessful and the successful claims “involve a common core of facts” or are “based on related legal theories,” it will be difficult to divide the hours expended on a claim-by-claim basis. Thus, the court should compare the plaintiff’s overall relief with the number of hours reasonably expended on the litigation. If the plaintiff obtained “excellent results,” her attorney should be duly compensated for all time reasonably expended on the litigation. However, if she obtained only “partial or limited success,” the court may reduce the lodestar amount if it believes that amount is excessive in relation to the plaintiff’s relief.

269 N.J. Super. at 404-05 (citing Hensley v. Eckerhart, 461 U.S. 424, 434-35 (1983)). In Hensley, 461 U.S. 424 (1983), the Court noted a plaintiff’s failure to obtain every remedy requested does not necessarily warrant a reduction in the fee award.

For example, a plaintiff who failed to recover damages but obtained injunctive relief, or vice versa, may recover a fee award based on all hours reasonably expended if the relief obtained justified that expenditure of attorney time.

461 U.S. at 435, fn 11.

Here, the Complaint alleged that Dane and Buckley subjected her to a hostile work environment and constructively discharged her. She prevailed on those causes of action against both respondents. However, because the time expended for research, argument, and proofs regarding back pay was based on facts and legal theories that were unrelated to the LAD violations or the other remedies, it is appropriate to reduce the fee award for time expended on back pay.

Complainant’s testimony regarding back pay covers approximately 21 pages out of the 156 page transcript of the November 2, 2011 hearing, or approximately 13.5% of the time expended at the hearing. Fees for the hearing date total \$1,085, and another \$1,085 was expended in meeting with Complainant to prepare for the hearing. 13.5% of the fees for those two dates would be \$292.95. Approximately one page of the 26-page post-hearing brief addressed back pay, and aside from research regarding unemployment statistics, the caselaw and analysis regarding back pay

were not unique to this case and unlikely to have taken considerable research. In addition to the time spent on post-hearing brief, the certification of services includes 4.5 hours on September 29, 2010, for “research regarding damages, prepare discovery responses.” No significant additional time was spent on this issue in the exceptions, as virtually the same text was re-printed there. Based on review of the brief and exceptions, five hours or \$775 will be deducted for research and writing regarding back pay.

Next, Respondent contends that the time expended on hearing preparation and research/writing the post-hearing brief and exceptions was unreasonable “in light of the relatively straight-forward nature of the matter.” (RE 2.) The fact that the Director’s May 6, 2013 opinion reversed an ALJ’s initial decision suggests in itself that the case had some level of complexity. The DAG’s post-hearing brief and exceptions show that extensive research and written argument was needed to address the ALJ’s analysis on the hostile work environment issue, distinguish the caselaw cited in the ALJ’s initial decision, and present a thorough and persuasive analysis of the legal issues based on a survey and analysis of relevant precedential case law.

After careful review of the certification of services, transcripts, brief, and exceptions, the Director finds the DAG’s hourly rate to be reasonable and concludes that after making deductions to address the back pay issue, the time expended was reasonable in this case. Accordingly, based on the parties’ submissions and the evidence in the record, a total of \$1,067.95, will be deducted from the fees requested, for a total of \$31,001.55 in attorney fees.

The DAG also requests reimbursement for \$490.50 in costs incurred in purchasing transcripts of the administrative hearing, which she copied and provided to counsel for Respondents, free of charge. Respondents have not objected to this claim for reimbursement. The request is reasonable and will be included in the award, for a total of \$31,492.05. Respondents shall be jointly and severally liable for the award of attorney fees and costs.

FINAL ORDER

In a May 6, 2013 order, the Director concluded that Dane Construction Co. and Pat Buckley subjected Complainant Shi-Juan Lin to unlawful discrimination and constructively discharged her in violation of the LAD, and that an attorneys fee award to the State would serve the public interest. Based on the May 6, 2013 order and the parties' submissions regarding fees and costs, the Director enters a final order as follows:

1. Dane Construction Co. and Buckley, and their agents, employees and assigns shall cease and desist from doing any act prohibited by the LAD.
2. Within 45 days from the issuance of this final order, Respondents shall forward to DCR a certified check payable to Shi-Juan Lin in the amount of \$25,000 as compensatory damages.
3. Within 45 days from the issuance of this final order, Respondents shall forward to DCR a certified check payable to, "Treasurer, State of New Jersey," in the amount of \$36,492.05, comprised of the \$5,000 statutory penalty, \$31,001.55, in attorney fees and \$490.50 in costs.
4. The penalty and all payments to be made by Respondents under this order shall be forwarded to: Ralph Menendez, Chief of Operations, NJ Division on Civil Rights, P.O. Box 46001, Newark, NJ 07102.
5. Late payments will be subject to post-judgment interest calculated at the rates set by the Rules Governing the Courts of New Jersey, from the due date until payment is received by DCR.

DATE:

SEP. 19, 2013



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS